

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10605 SENATE JUDICIARY

HB

246

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 246(L&C)
(H) Publish Date: 4/17/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Omnibus Insurance Bill BRU Insurance (116)
Component Insurance Operations
Sponsor House Labor & Commerce by Request
Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1156 GF Receipt Supported Services | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
Division Insurance Date/Time 4/11/02 11:55 AM
Approved by: Deborah B. Sedwick, Commissioner Date 4/11/2002
Agency Department of Community & Economic Development

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halcro Vice-Chair
Representative Pete Kott
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes



Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Memorandum

Date: May 7, 2002
To: Senator Robin Taylor
Judiciary Chair
From: Representative Lisa Murkowski
Subject: Hearing Request

House Bill 246, Omnibus Insurance Reform, makes corrections and clarifications to Alaska's insurance statutes in the areas of multiple employer welfare arrangements (MEWAs), confidentiality of records, late payments for premium taxes, annual fees to operate joint insurance arrangements, property-casualty guaranty fund assessments, and stop loss insurance standards.

Although cumbersome, there is no controversy surrounding this measure. Attached you will find a copy of House Bill 246, sponsor statement, sectional analysis, and zero fiscal note. Please schedule House Bill 246 the earliest your schedule will allow. Thank you for your accommodation.

**REQUEST FOR
HEARING**

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halco Vice-Chair
Representative Pete Kott
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Representative Norman Rokeberg
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Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Sponsor Statement House Bill 246 Omnibus Insurance Reform

Regulatory Structure for MEWAs: Sections 1, 45 and 57. A MEWA is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. Under current statute a Multiple Employer Welfare Arrangement (MEWA) is regulated as an insurer. The provisions establish a more appropriate regulatory structure for MEWAs, in particular, more reasonable and appropriate capital and surplus, reserving and financial reporting requirements.

Confidentiality of Records: Sections 2-5, 51, 58. These provisions clarify that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agency and maintain the confidentiality and may enter into information sharing agreements. Information that is designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information that the director finds the withholding of which is necessary to protect a person or is in the public interest.

Late Payment of Premium Taxes: Sections 13, 50. These provisions establish late payment fees for all entities that pay premium taxes including insurers and surplus lines brokers for when premium taxes are not received by the division when due.

Annual Fee to Operate as a Joint Insurance Arrangement: Section 52. This provision establishes an annual fee in order to offset the cost to the division of insurance of enforcing of AS 21.76 on joint insurance arrangement.

Revision of Property-Casualty Guaranty Fund Assessment: Sections 54-56. These provisions revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Stop Loss Insurance Standards: Section 36. The changes establish minimum specific and aggregate attachment points (i.e. retention limits) for stop loss insurance policies. These minimums will provide greater protections to smaller employers who chose to self-fund their health care plans. Without these minimums insurers are able to sell health insurance under the guise of stop loss insurance that is not required to comply with state health care insurance laws including benefit mandates, guarantee issue and portability requirements.

Correction/Clarification of Existing Statutes: Sections 6-12, 14-35, 37-44, 46-49, 53, 59-61. Please see sectional analysis for explanation of changes.

Sponsor Statement

CS HB 246 (JUD) Sectional Analysis

Regulation of Multiple Employer Welfare Arrangements

Sections 1, 45 and 57 establish a regulatory framework for Multiple Employer Welfare Arrangements (MEWA). A MEWA is defined under federal law and is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. States are given authority under the federal Employee Retirement Income Security Act (ERISA) to regulate MEWAs under state insurance law.

Section 1. AS 21.03.021. Regulation of MEWAs, page 1.

These new subsections provide the authority for the Alaska Division of Insurance to regulate MEWAs. Subsection (b) specifies that an entity that is offering medical coverage is under the jurisdiction of the Alaska Division of Insurance unless it is under another governmental agency. Subsection (c) provides authority to conduct an examination to determine what the entity is and whether it is subject to Title 21. Subsection (d) requires that while an examination to determine jurisdiction is being conducted any transaction of insurance business must advise the purchaser that the coverage is not regulated under Alaska insurance statutes and is not covered by a guaranty fund in Alaska.

Confidentiality of Records

Sections 2 – 5, 51, and 58 add specific statutory clarification of the confidentiality of records maintained within the division. The language clarifies that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agencies and maintain the confidentiality and may enter into information sharing agreements. Information that is designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information that the director finds the withholding of which is necessary to protect a person or is in the public interest.

Section 2. AS 21.06.060. Confidential documents, page 2.

The amendment to this subsection adds a reference to the new subsections in Section 3 on confidential documents.

Section 3. AS 21.06.060. Confidential documents, page 2.

New subsection (b) explains that documents that are confidential or not available for public inspection, are not subject to inspection, copying or subpoena, may be used in a regulatory or legal proceeding, may be released if the person who provided the information consents or releases incomplete or misleading information on the same topic.

New subsection (c) specifies that a person working for the director may not be required to testify about confidential information.

New subsection (d) specifies that providing confidential information to the director does not waive any claim of privilege.

New subsection (e) allows the director to disclose confidential information to the legislature, regulatory or law enforcement agencies or the NAIC if the entity will maintain the confidentiality. The director may also receive information from regulatory or law enforcement agencies or the NAIC and will maintain the confidentiality of the information if requested to do so or given notice that the records are confidential by law of the supplying agency. The director may enter into agreements with other regulatory or law enforcement agencies or the NAIC consistent with this section.

New subsection (f) specifies that the following documents are confidential:

- personally identifiable consumer information unless disclosure is necessary to resolve a consumer complaint;
- information shown to be trade secret or proprietary business information including health insurance claim cost data and usual, customary and reasonable charge determinations;
- information provided by a person not subject to regulation by the director if the information is identified as confidential by the director; and
- financial analysis ratios and examination synopses from the NAIC.

New subsection (g) gives the director authority to withhold information from public inspection if the director finds it is necessary to protect a person against unwarranted injury or is in the public interest.

Section 4. AS 21.06.150(g). Confidential documents, page 4.

This subsection was repealed and reenacted to specify that examination workpapers are confidential. The director continues to be able to publish the examination report in a newspaper or electronically if it is determined to be in the public interest to do so.

Section 5. AS 21.06.210. Close a hearing, page 4.

This new subsection (h) allows the director to close a hearing to the public when it is necessary to protect a person against unwarranted injury or is in the public interest. This includes a sentence from the existing AS 21.06.150(g) that is lost when the section is repealed and reenacted in Section 4 of the bill.

Correction of Wording

Section 6 is amended to correct wording in a section adopted by the legislature in 2000.

Section 6. AS 21.07.040(c), Correction of Wording, page 5.

This amendment to subsection (c) changes wording to a phrase that more properly reflects the meaning of the subsection. The change removes "a current or former person" and replaces it with "a person currently or formerly"

Limit on Processing Time for Certificate of Authority Applications

Section 7 is amended to change the processing time for applications from an insurer for a certificate of authority from 30 days to 60 days.

Section 7. AS 21.09.120(a). Limit on Processing Time, page 5.

This amendment to (a) changes the processing time for a certificate of authority application from 30 days to 60 days. The recommended processing time for the uniform certificate of authority application adopted by the National Association of Insurance Commissioners is 60 days. The division is participating in the uniform application process and needs to adopt the uniform goal on time to effectively process an application.

Payment of Premium Taxes and Fees

Sections 8, 10, and 13 through 17 address several areas of premium taxes and fees payable to the state. Sections 8 and 10 expand the director's authority to specify the form of payment of certificate of authority continuation fees and financial statement filing fees which was granted for premium tax collection in 1998. Section 13 provides for a late fee payment when premium taxes are not received when due. Section 14 clarifies that tax credit statutes apply to taxpayers under AS 21.09.210. Sections 15 through 17 clarify language on taxation of jumbo life policy premiums and exemption from retaliatory fees, both of which were adopted in the 1998 Legislative Session.

Section 8. AS 21.09.130(a). Fee Payment, page 5.

The amendment to subsection (a) gives the director authority to specify the method of payment of certificate of authority continuation fees by electronic or other means. This same authority was given to the director in 1998 on the collection of premium taxes.

Section 10. AS 21.09.200(d). Fee Payment, page 6.

The amendment to subsection (d) gives the director authority to specify the method of payment of annual statement filing fees by electronic or other means. This same authority was given to the director in 1998 relative to the collection of premium taxes.

Section 13. AS 21.09.210(g). Late Fee, page 6.

The amendment to subsection (g) adds a late payment fee for late payment of premium tax required under AS 21.09.210 and late payment of retaliatory fee required under AS 21.09.270. The fee is the greater of \$100 per day or 25% of the tax due. In addition interest is charged at 1% per month or partial month.

Section 14. AS 21.09.210(j), Tax Credit, page 6.

The amendment to subsection (j) adds the fire safety standards counsel charitable contribution premium tax credit to the education charitable contribution tax credit and clarifies that the provision applies to payers of tax under this section.

Section 15. AS 21.09.210(m), Jumbo life policy taxation, page 6.

This amendment to subsection (m) makes it clearer that individual life policy premium is taxed at 2.7% up to \$100,000 and premium above \$100,000 is taxed at 0.1%.

Section 16. AS 21.09.270(b), Exemption from retaliatory fee, page 7.

This amendment to paragraph (b)(2) clarifies that the exemption from payment of retaliatory fee is only for health care insurance premium received by an insurance company from a state, municipality, city or borough school district, a regional educational attendance area, University of Alaska or community college.

Section 17. AS 21.09.270, Exemption from retaliatory fee, page 7.

This new subsection (f) clarifies that the retaliatory fee calculation does not include taxes paid on health care insurance premiums received from the state, political subdivisions, or University of Alaska. This is a clarification of an exemption adopted in 1998 to more carefully show the extent of the intended exemption.

Authority for Filing of Financial Statements

Sections 9, 11 through 12 provide authority for the director to allow filing of financial statements only on an electronic basis at the place of the director's designation. This authority will allow the division to reduce the resources necessary to maintain paper files of insurance company annual financial statements. Section 12 changes the filing due date from 60 days after the end of the quarter to 45 days after the end of the quarter to make it consistent with the due date in the majority of other state insurance departments.

Section 9. AS 21.09.200(a), Electronic Filing of Financial Statements, page 5.

This amendment allows the director to designate where the financial statement required in the statute is to be filed. The location of the filing will be published by the director at least annually by bulletin.

Section 11. AS 21.09.200(c), Electronic Filing of Financial Statements, page 6.

This amendment allows the penalty in statute to be charged when the financial statement is not sent to the location designated by the director. The penalty is \$100 per day until properly filed.

Section 12. AS 21.09.205(b), Filing of Quarterly Financial Statements, page 6.

This amendment modifies the due date for the filing of the quarterly financial statement from 60 days after the end of the quarter to 45 days after the end of the quarter. Most states and the

National Association of Insurance Commissioners require the quarterly financial statements to be filed 45 days after the end of the quarter

Clarification of Contents of US Branch Financial Statement

Section 18 clarifies that the US Branch financial statement filed with the division must include all insurance activity within the United States.

Section 18. AS 21.09.310(n). US Branch Financial Statement Contents, page 7.

The amendment to subsection (n) clarifies that the US Branch financial statement shall have only US Branch insurance activities and must include all insurance transactions conducted within the United States.

Clarify the application of RBC Mandatory Control Level Actions

Section 19 clarifies that the actions in AS 21.14.050 required when an insurer reaches the Mandatory Control Level only apply to domestic insurance companies.

Section 19. AS 21.14.050(a). RBC Mandatory Control Level actions, page 8.

This amendment to subsection (a) clarifies that this section that requires an insurer to be placed under regulatory control when the insurer reaches the Mandatory Control Level only applies to domestic insurers. Actions for foreign insurers are included in AS 21.14.070.

Compliance Officers, Compensation, and Clarification of the Firm License

Amendments in Section 20 to 25 make changes to licensing statutes and clarifies who can receive compensation. Sections 20 and 22 clarify that a producer firm may have more than one compliance officer with all compliance officers covering all the powers conferred by the firm's license and requires the compliance officer to be licensed as an individual in the firm for specific lines and classes of authority. Section 21 rewords a section that requires the scope of the firm license to include all lines and class of authority of each individual in the firm. Section 23 makes small amendments to AS 21.27.370(c) on unlicensed compensation to clarify the meaning of this section that was adopted in 2001. Sections 24 and 25 provide better definitions for "compliance officer" and "class of license".

Section 20. AS 21.27.020(c). Compliance officer, page 8.

This amendment to subsection (c) clarifies that qualification for a firm license will allow the designation of more than one compliance officer to be responsible for the firm's compliance with Alaska statutes and regulations.

Section 21. AS 21.27.140(a). Firm License, page 8.

The repeal and reenactment of subsection (a) results in clarification that the scope of the firm license is to include all lines and classes of authority of the individuals working in the firm.

Section 22. AS 21.27.140(b). Compliance officer, page 8.

The repeal and reenactment of subsection (b) results in clarification that the firm may not be licensed unless each individual in the firm is licensed. In addition, it specifies that each compliance officer must also be licensed as an individual in the firm for a specific line and class of authority and, if there is more than one compliance officer, each area of the firm's license authority shall be covered by a compliance officer.

Section 23. AS 21.27.330(b). Firm license fee, page 9.

This amendment clarifies that a licensee that transacts business at more than one location must pay a license fee for each location, if the licensee transacts Alaska business from that location.

Section 24. AS 21.27.370(c). Compensation, page 9.

Amendments to subsection (c) clarify that a person who discusses specific terms and conditions of a policy or a person who gives opinions or advice regarding insurance is not eligible for compensation without first having a license.

Section 25. AS 21.27.900(4). Definition, page 9.

The amendment to the definition of "compliance officer" in (4) adds that the compliance officer must be designated for a specific line and class of authority.

Section 26. AS 21.27.900. Definition, page 9.

The addition of a new paragraph is to define a "class of authority" to mean one or more designations of authority such as insurance producer, managing general agent, reinsurance intermediary manager, reinsurance intermediary broker, surplus liens broker, or independent adjuster, or third party administrator.

Exemption from Premium Tax and Payment in Lieu of Premium Tax

Sections 27 through 31 clarify language in the area of premium tax exemptions and exemption from other state or local taxes. Sections 27, 29, and 31 clarify that exemptions are for aircraft that are primarily engaged in interstate or foreign commerce instead of regularly engaged in such business. Sections 28 and 30 amend the sections to clarify what other state taxes are not payable when an entity pays premium tax under these statutes.

Section 27. AS 21.33.037(b). Aircraft exemption from licensing, page 10.

This amendment clarifies that the prohibition of a person acting as an agent for an unauthorized insurer in this state does not apply to unauthorized insurance transactions for the property or operations of railroads or aircraft primarily engaged in interstate or foreign commerce.

Section 28. AS 21.33.055(a). Premium tax payment in lieu of other taxes, page 10.

This amendment to subsection (a) clarifies that only the premium taxes paid by an insurance company for unauthorized insurance business allowed in AS 21.33 are in lieu of all other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 29. AS 21.33.055(c). Aircraft exemption from unauthorized insurer premium tax, page 11.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the unauthorized insurer premium tax. This will help determine when the exemption applies.

Section 30. AS 21.33.061(c). Premium tax payment in lieu of other taxes, page 11.

This amendment to subsection (c) removes the statement that the premium receipt tax is in lieu of other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 31. AS 21.33.061(g). Aircraft exemption from independently procured premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax. This will help determine when the exemption applies.

Exemption from Premium Tax

Sections 32 and 33 clarify premium tax payments and exemptions for surplus lines placements.

Section 32. AS 21.34.180(a). Admitted insurance exemption from surplus lines premium tax, page 12.

This amendment clarifies that for subscription policies the portion of premium taxes submitted to the division by the admitted insurer does not need to also be submitted to the division by the surplus line broker. This will avoid double payment of premium taxes.

Section 33. AS 21.34.180(d). Aircraft exemption from surplus lines premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax.

Payment of Premium Taxes and Fees

Section 34 establishes a late fee payment for when premium taxes for surplus lines insurance placements are not received by the division when due.

Section 34. AS 21.34.180(f). Late Fee, page 12.

The new subsection (f) adds a fee for late payment of the premium tax required under AS 21.34.180 for surplus lines insurance placements. The fee is the greater of \$100 per day or 25% of the tax due. In addition interest is charged at 1% per month or partial month. Remaining subsections are renumbered.

Insurable Interest

Section 35 clarifies the application insurable interest to life, annuity or health insurance.

Section 35. AS 21.42.020(d). Insurable interest, page 13.

AS 21.42.020 is intended to apply to life, health and annuity insurance. However, the term "personal insurance" is used and is not defined in AS 21.42. It is a particularly confusing term to use since "personal insurance" is defined in AS 21.36.310 only for purposes of 36.210-310 and it is defined to exclude life, health, and annuity insurance. Therefore, the change to this section deletes the reference to personal insurance and replaces it with life, health and annuity insurance.

Stop Loss Insurance Regulation

Section 36 regulates the issuance of stop loss insurance policies by setting standards for such policies.

Section 36. AS 21.42.145. Stop Loss Insurance, page 13.

This new section added to Chapter 42 prohibits a health insurer from issuing a stop loss insurance policy that allows payment at claim levels below \$10,000 for an individual or for a large employer plan is \$4000 times the number of individuals covered in a plan or 120% of claims for a plan or \$20,000, whichever is greater, or pays claims at lower than 110% of expected claims, or provides direct coverage of health care expenses. This provides a definition between health insurance and stop loss insurance policies covering health risks. The new section allows adjustment of the standards set and allows adoption of a regulation to implement the section. The new section defines terms used in the section.

Health Insurance

Section 37 through 44 makes small changes to health insurance policy benefits, requirements for insurers discontinuing health products in this state, and small employer insurers.

Section 37. AS 21.42.363. Eye care under health insurance, page 14.

AS 21.89.040 requires an insurer to provide reimbursement for services provided by an optometrist if the plan covers services within the scope of practice of an optometrist. This provision should be in AS 21.42 where the other coverage mandates are located. This section simply moves the provision to a new section AS 21.42.363.

Section 38. AS 21.42.365(b). Health policy benefits, page 14.

Under AS 21.42.365(b) the director is required to make adjustments to the alcohol and drug abuse limits on January 1 every three years using the prior calendar years. It is not possible to use the prior calendar years and make the adjustment on January 1, since the CPI data is not available until after January 1. The change to this section removes the requirement that the adjustment be based on the prior calendar years so that the director can make the adjustment, effective on January 1, based on available CPI data.

Section 39. AS 21.42.390(b). Diabetes benefits, page 15.

This subsection is repealed and reenacted to require insurers to provide not less than \$1,500 for diabetes outpatient self-management education. HB 298 was signed into law this year with a limitation provision that is ambiguous. The change in this section modifies the provision to more clearly reflect the intent.

Section 40. AS 21.42.500(5). Definitions, page 15.

When the HIPAA provisions were added in 1997, the mandated benefit provisions in AS 21.42 were amended to use terms consistent with the HIPAA group definitions. The HIPAA definition of individual health coverage was not defined in our statute, since we used the CHIA as the alternative mechanism, which made most of the individual health provisions in HIPAA inapplicable. However, using the group definitions of health insurance coverage did not reflect the exclusion for individual short-term medical coverage as provided in the individual health HIPAA provisions. The unintended consequence is that individual short-term medical coverage (non-renewal health care coverage for less than 1 year) must comply with health benefit mandates. Most of these do not make sense for a short-term medical coverage such as annual screening exams. This section amends the definition of health care insurance plan in order to exclude short-term individual health coverage from the benefit mandates.

Section 41. AS 21.42.500. Definitions, page 15.

This new paragraph refers to already existing definitions given in AS 21.51 in the area of health insurance.

Section 42. AS 21.51.090. Claim forms, page 15.

This amendment clarifies that the insurer has 10 working days to furnish claimant forms when notified of a claim. The changes to this section modify AS 21.51.090 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim communication.

Section 43. AS 21.51.110. Time of payment of claims, page 15.

This amendment clarifies that indemnities will be paid within 30 days of receipt of written proof of loss. The changes to this section modify AS 21.51.110 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim payment.

Section 44. AS 21.54.130(c). Discontinuing health care plans, page 16.

Under HIPAA, insurers are allowed to exit the small group, large group or both markets. However, the current statutory language implies that they must exit from both markets. The change to this section clarifies that an insurer can exit just one or both of the group markets.

Section 45. AS 21.55.010. Regulation of MEWAs, page 16.

This amendment adds a licensed self-funded MEWA to the membership of the Comprehensive Health Insurance Association set out in Chapter 55.

Small Employer Health Insurance

Sections 46 and 47 clarify two areas of the small employer health insurer provisions in AS 21.56.

Section 46. AS 21.56.120(c). Small employer insurer, page 17.

Prior to the HIPAA modifications in 1997 this section required the actuary to certify to compliance with the renewal requirements because they were in Chapter 56. The 1997 HIPAA changes moved this section to AS 21.54 without modifying the references so that under current law the actuary is no longer required to certify to compliance with the renewal requirements (because it is no longer in the chapter as referenced in AS 21.56.120). The change to this section corrects this error and also adds the requirement that the actuary certify to all the HIPAA provisions in AS 21.54 as they relate to small group coverage as was intended.

Section 47. AS 21.56.140(c). Small employer insurers, page 17.

The intent of AS 21.56.140(c) is to require that insurers exclude any employee who has existing comprehensive medical coverage in determining whether an employer has met established minimum participation requirements. The use of the term "similar existing coverage" does not clearly reflect this intent and therefore the change to this section modifies this to "existing creditable coverage". Creditable coverage is a clearly defined term under AS 21.54.

Consumer Credit Insurance

Sections 48 and 49 clarify information that must be provided in notices to a debtor before consumer credit insurance is purchased and information that must be provided in the policy.

Section 48. AS 21.57.055(a). Consumer credit insurance, page 18.

These two amendments clarify that the creditor must allow the debtor to provide any other creditor required insurance through existing policies or other insurers and state whether or not benefits will pay off the debt at the time of death, disability or unemployment. An insurer may require insurance but not necessarily credit insurance. The current disclosure requirement is incorrect in that it implies that an insurer may provide coverage for unearned premium payments. However, AS 21.57.040 does not allow coverage of unearned premium. Therefore, the change in this section modifies the provision to clarify the insurer must disclose whether benefits will completely pay off debt existing at the time of death, disability, or unemployment.

Section 49. AS 21.57.060(b). Consumer credit insurance, page 19.

Credit unemployment was left out of this disclosure requirement in error. The change to this section adds credit unemployment to the disclosure statement.

Late Fee for Late Payment of Title Insurance Premium Tax

Section 50 provides for a late fee when the premium tax on title insurance business written during the year is not paid by the due date in statute.

Section 50. AS 21.66.110(c). Late Fee, page 20.

The new subsection (c) adds a late payment fee for late payment of the premium tax required under AS 21.66.110 on title insurance. The fee is the greater of \$100 per day or 25% of the tax due. In addition, interest is charged at 1% per month or partial month.

Section 51. AS 21.66.380(b). Confidential documents, page 20.

This amendment specifies that information provided to the division that could identify the experience of a particular title insurance limited producer is confidential.

Annual Fee for Joint Insurance Arrangements

Section 52 sets an annual fee for an entity operating as a joint insurance arrangement under Chapter 76.

Section 52. AS 21.76.130. Annual Fee, page 20.

This new subsection adopts an annual fee to be paid by each entity operating under Chapter 76 as a joint insurance arrangement. The annual fee is to compensate the division for services performed in determining that an entity is staying within the authority given in Chapter 76. An entity that is found to be operating outside of Chapter 76 must be appropriately licensed as an insurer or producer under other provisions of Title 21.

Claim Priority in Liquidation Proceeding

Section 53 corrects the classification of claims by government by removing them from stockholders claims class 8.

Section 53. AS 21.78.260(5). Claim Priority in Liquidation Proceeding, page 20.

This amendment to paragraph (5) moves claims of a government entity for penalties out of Class 8 Stockholder Claims to Class 7. Class 8 are residual payments to stockholders of the defunct company and Class 7 are for payment of miscellaneous claims such as surplus notes, premium refunds on assessable policies, and payments to members of a mutual company. Specific penalty claims as a part of residual claims as the statute currently reads provides an impossible allocation of remaining funds in a liquidation estate.

Revision of Property-Casualty Guaranty Fund Assessment

Sections 54 through 56 amend AS 21.80 to revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Section 54. AS 21.80.060. Guaranty Fund Assessment, page 20.

The amendment to this section revises the assessment formula and applies it to information in annual statements as filed by the insurers on March 1. Assessments are charged to member insurers to generate funds for claims and administration costs. The assessment paid is a percentage of the premium written by the insurer in Alaska in the prior calendar year. That initial assessment percentage is used to adjust the final amount due after completion of the calendar year following the year used to calculate the initial assessment. The adjustment would result in additional payment by insurers who have recently written premium in the Alaska market and a lowering of the payment for insurers who have collected less premium in the Alaska market. Insurers would be billed or credited for the adjustment. If the association determines that funding is necessary the initial assessment shall be made during November of each year and the association may use the services of an independent actuary to assist in determining the amount of the assessment.

The section is also amended to make it clear that excess funds in the association may be used to reduce future assessments unless the association determines that there are significant excess funds. If there are significant excess funds the association shall return amounts to individual policyholders through procedures established by the association. The procedures shall have the association reimbursing member insurers for issuing uniform rate credits against premiums charged during the next calendar year.

Section 55. AS 21.80.070. Guaranty Fund Assessment, page 25.

The amendments to this section require the association to establish procedures in its Plan of Operation for determining uniform surcharge percentages that member insurers would apply to

policies issued. The amendments also require the association to establish procedures so that the surcharge percentages shall match adjusted assessments as closely as possible for the calendar year. Any mismatch between the adjusted assessment paid and the maximum allowable surcharge which could be collected shall be taken into consideration when determining future surcharge percentages.

Section 56. AS 21.80.140. Guaranty Fund Assessment, page 26.

The amendment to this section allows the use of surcharge rates that may be added to policy premium that are sufficient to offset the adjusted assessments to an insurer. The amendment also sets a procedure for the director to be notified of the surcharge percentage set by the association and that such percentage shall be the maximum surcharge rate which member insurers may apply to policies. The amendment does allow an insurer to apply to the director directly for a higher surcharge rate.

Section 57. AS 21.85. Regulation of MEWAs, page 26.

This new Chapter in Title 21 provides the details of regulation of self-funded MEWAs operating in the state of Alaska.

AS 21.85.010. Certificate of authority required

This new section requires that a MEWA may not exist unless a certificate of authority is obtained from the director. The section defines when a self-funded MEWA is established or maintained in the state and thereby required to obtain a certificate authority.

AS 21.85.020. Name

This new subsection provides rules for the name of a self-funded MEWA such that the name does not imply that the MEWA is an insurer and that the name is not similar to another MEWA such that it would mislead the public.

AS 21.85.030. Qualifications for a certificate of authority.

This new subsection sets out in (a) the standards that must be met to obtain a certificate of authority. The employers must be members of an association in a related trade, profession or industry. The employers must exercise direct control of the arrangement. The MEWA must be nonprofit and provide only allowable benefits along with life insurance that meets the Alaska insurance statutes. The MEWA must have adequate facilities and competent personnel and the arrangement must cover not less than 2 employer and not less than 75 employees. The MEWA must not solicit participation from the general public but may associate with a licensed insurance producer to enroll employers. The arrangement may not be used solely to collect premiums and forward premiums to an insurance company except in the case of life insurance.

The new subsection (a) sets some solvency requirements. The MEWA must deposit \$100,000 with the director for payment of claims if the arrangement should become insolvent and the arrangement must provide the director a written plan of operation that ensures financial integrity if the director requests such a document. The MEWA must demonstrate that it has the ability to remain solvent. The methods open to the director for determining that the MEWA has the ability to remain solvent are

- pro forma financial statements
- types and levels of stop-loss insurance
- deposit requirement for each employee equal to at least one month cost of providing benefits
- management experience
- other factors the director considers relevant.

The new subsection (b) allows the director to require documents which describe the rights and obligations of the participants to say that those participants are liable for a pro rata share of all liabilities that are unpaid.

The new subsection (c) requires that the MEWA must have stop loss insurance coverage for 100% of claims in excess of the attachment point recommended by a qualified actuary.

AS 21.85.040. Application for a certificate of authority.

This new section sets out the items that must be submitted in an application for a certificate of authority. The items include the submission of an application showing detailed information of the MEWA along with a fee. The application must also have the following

- a copy of all documents describing rights and obligations of the employers, employees and beneficiaries of the arrangements,
- copy of the summary plan description files with the US Department of Labor,
- evidence of coverage or intent to cover at least 2 employers and at least 75 employees
- copy of the most recent annual financial statement or pro forma financial statement including an actuarial opinion
- proof of fidelity bonds
- copy of any stop-loss insurance policies in place or proposed
- biographical reports evidencing trustworthiness and competence of each managing employee or fiduciary
- a statement that the information provided is true and correct and that the arrangement is in compliance with specific state and federal laws, and
- base contribution rates for participation for the initial year of operations.

AS 21.85.050. Minimum reserves.

This new section requires that a self-funded MEWA maintain reserves equal to at least 30% of unpaid claim liability or the amount certified by an actuary, whichever is greater.

AS 21.85.060. Investments.

This new section requires that the MEWA maintain an amount of funds equal to 85% of net unpaid claim liability in cash, cash equivalents, insured bank deposits, bank certificate of deposits, insured share or savings accounts of a savings and loan or rated credit instruments issued or guaranteed by the US or Canada or by a government-sponsored enterprise of the US or Canada if the instrument is guaranteed or is backed by the full faith and credit of the US or Canada. The bank certificate of deposit is subject to review of the director to determine if the investment is sound. If it is not determined to be sound the director may require liquidation of the portion found to be unsound.

AS 21.85.070. Contribution rates.

This new section requires that the self-funded MEWA maintain contribution rates that fund the greater of the amount certified by a qualified actuary, or the sum of projected claims liability for the year, plus all projected costs of operation for the year, plus an amount equal to deficiency of reserves for the prior year minus an amount equal to reserves in excess of minimum required levels of reserves. The contribution rates must also be not excessive, inadequate or unfairly discriminatory.

AS 21.85.080. Reporting requirements.

This new section sets out requirements for the filing of financial statements with the director. The statements must be a statement of the financial condition, transactions and affairs as of the preceding December 31 on forms required by the director. The financial statement as a whole must include

- statement of financial condition (balance sheet);
- a statement of change in financial condition (income statement) accompanied by an actuarial opinion by a qualified actuary certifying that the unpaid claim liability meets the requirements for health coverage reserves in Chapter 18 of the Alaska insurance statutes, including a recommended level of specific and aggregate stop loss insurance, and a description of actuarial soundness with recommendations for improvement;
- Statement of contribution rates for next year;
- Certified financial statements for the prior two years if payments to the arrangement by participants during the prior year exceeded \$2 million; and
- Additional information the director finds necessary to determine financial integrity.

New subsection (b) requires a quarterly statement to be filed within 60 days of the end of each quarter which must include:

- statement of financial condition,
- statement of change in financial condition since the prior year end
- report of number of participating employees and number of covered lives at the end of the quarter and contributions received during the quarter, and
- any other information required by the director.

The new subsection (c) requires that the self-funded MEWA must also file with the director a copy of each Form 5500, with attachments, filed with the Internal Revenue Service.

AS 21.85.090. Consumer information notice.

This new section requires that a notice be given to each participating employee, in writing at the time coverage becomes effective that is clear and conspicuous, no smaller than 10 point type, and that states that the coverage is issued by a self-funded MEWA ; coverage is not protected by the Alaska Life and Health Insurance guaranty Association; and if claim payment is not made by the MEWA the employer or employee may be responsible for payment.

AS 21.85.100. Applicability of other provisions.

This new section sets out what other provisions of the Alaska insurance statutes apply to self-funded MEWAs. The sections include requirements for examinations, managed care insurance plans, unsound management, issuance and continuance of the certificate of authority,

disciplinary action against the certificate of authority, filing of financial statements, payment of premium tax, filing of changed information, retaliatory fee, reporting of material transaction, maintenance of records, health insurance reserves, requirements for unauthorized insurers, trade practices and frauds, approval of policy forms, coverage mandates, requirements for group life insurance, requirements for health insurance, participation in small employer health insurance and high risk health insurance, requirements for rehabilitation or liquidation.

AS 21.85.500. Definitions.

This new section defines the terms used throughout Chapter 85. It also defines "self-funded multiple employer welfare arrangement" as used in this chapter to be a MEWA that does not provide for benefit payment under a policy of insurance issued by authorized insurance companies.

Section 58. AS 21.87.190(b). Confidential documents, page 36.

This amendment specifies that detailed rate justifications and rating formulas are confidential without a specific determination by the director.

Section 59. AS 21.87.340. Applicability of other provisions, page 36.

This amendment clarifies that the Alaska Patients' Bill of Rights and the minimum health insurance reserves standards apply to hospital and medical service corporations.

Repeal of Sections

Section 60 repeals several sections because of statute changes included in this bill.

Section 60. Repealing sections, page 36.

The section repeals AS 21.33.045(d) that exempted life, health and annuity insurers from providing information if the director had reason to believe the coverage was placed with a nonadmitted insurer. Life, health and annuity insurers who write business in Alaska and were not admitted in Alaska would be treated like all other insurers and required to provide information to the director. The section repeals AS 21.87.340(17) because it references repealed section AS 21.89.040. The section repeals current section AS 21.89.040 due to the optometric services provision being added as a new section AS 21.42.363 in Sec. 36 of this bill.

Section 61. Revisor instruction, page 36.

The revisor is instructed to change the title of AS 21.12.020 to reflect the change made in Section 31 of this bill.

Section 62. Effective date, page 37.

This section provides for an effective date of July 1, 2002 for all sections of this bill.

HB

252

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 252(HES)
(H) Publish Date: 2/25/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: RELATING TO CONSTRUCTION OF THE CINA STATUTES AND SCOPE OF DUTY FOR SOCIAL WORKERS BRU: Family and Youth Services
Component: FYS Management
Sponsor: COGHILL
Requestor: HOUSE (HES) Component Number: 2306

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|-------------|-------------|-------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 80.0 | 50.0 | 50.0 | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 80.0 | 50.0 | 50.0 | 0.0 | 0.0 | 0.0 |

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| CHANGE IN REVENUES (0) | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|--|-------------|-------------|-------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 80.0 | 50.0 | 50.0 | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type—do not abbreviate) | | | | | | |
| TOTAL | 80.0 | 50.0 | 50.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

The intent of this proposed legislation appears to be one that is in line with the department's desire to provide support to families who can benefit from it, and to improve safety and well being of children. Intensive Family Preservation services are provided in many communities across the nation. These programs work intensely with a small number of families, for a short period of time, to help the family through a threatening time of crisis. Intensive Family Preservation services can be beneficial in preventing children from entering protective custody, and in reducing the amount of time children spend in protective custody. These services have limits in their appropriateness and effectiveness.

Currently, DFYS receives federal and state funds to provide family support, family preservation and time

Prepared by: Theresa Tanoury, Director Phone 465-3191
Division: Family & Youth Services Date/Time 02/22/2002
Approved by: Elmer A. Lindstrom, Deputy Commissioner Date 02/22/2002
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

BILL NO. CSHB 252(HES)

ANALYSIS CONTINUATION

ANALYSIS CONTINUED:

limited family reunification services. These funds are disbursed through the grant process to 26 agencies in communities throughout Alaska.

The legislation obligates the division to consider using Intensive Family Preservation services when and where available; and it allows the division to determine the appropriateness of the services.

The legislation also states an expectation that the department will research and pursue outside funding to develop these services. The detailed prospective study (which includes development and training), data analysis, and projection process will need to be completed by an outside source with specific expertise. This fiscal note is for the expected cost of this process. Funding to cover the cost of this process is requested for three years. Cost covers expenses related to the required study. Since the CS HB252 allows phase in of these services to occur, the department will spend first year funding on developing and training for intensive family preservation services.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 252(RLS)
 (H) Publish Date: 4/30/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "...scope of duty and standard of care for BRU Civil Division
persons who provide services to certain children and families ..." Component Special Litigation
 Sponsor: Representative Coghill
 Requester: House Rules Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CHANGE IN REVENUES () | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
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FUND SOURCE (Thousands of Dollars)

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|---------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| 1007 Interagency Receipts | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Section 7 of this bill restates existing law using different language. CSHB 252 (RLS) will create no new liability or litigation, and is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughhete for Bruce M. Bolelho, Attorney General
 Agency: Department of Law

Phone (907) 465-5370
 Date/Time 4/30/02 10:50 AM
 Date 4/30/2002

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:

119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245



Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 102

REPRESENTATIVE JOHN COGHILL

HB 252 STANDARD OF CARE FOR CINA SERVICES

Sponsor Statement

We must continue our work of balancing child protection with family preservation during government intervention. Parents are held to a standard of care by our state with the threat of losing parental rights if they fail in meeting these standards.

HB 252 is introduced with the purpose of recognizing parents in their God given role to raise their children as they see fit. This bill also recognizes that parents fail in varying degrees and the Division of Youth Services is called upon to protect the children while trying to preserve the family. Therefore we are adding the parent's participation in the event of a child coming under court jurisdiction.

Failing to properly care for children is not just a parental issue. Our State Division of Youth Services also is made up of humans that from time to time may fail in a standard of caring. Therefore HB 252 is requiring that a standard of care be instituted within our State so that each department employee is held to at least the same standard of care that we require of parents in Alaska.

Since we are invoking police and judicial powers to our agency personnel I believe that a higher standard of duty, conduct and care is needed. The requirements should be consistent with those stated in the Board of Social Workers in AS 08.95

Currently under AS 47.10.960 there is no duty or standard of care imposed department employees. The lack of a standard of care obscures the fiduciary duty of the State to the parents and children for which they are making these decisions.

HB 252 simply requires DFYS to implement through the regulatory process the scope of duty owed and the standard of care that must be met by department employees when dealing with CINA cases under Title 47. This legislation will provide for rules that can be understood by public employees and private citizens who may have this law applied to their lives.

Representative John_Coghill@LEGIS.state.ak.us

Sponsor Statement

Alaska State Legislature

Interim:

119 N. Cushman St, Suite 211
Fairbanks, AK 99701
(907) 456-5081 - Phone
(907) 456-8245 - Fax



Session:

State Capitol, Room 102
Juneau, AK 99801
(907) 465-3719 - Phone
(907) 465-3258 - Fax

Representative John Coghill

SECTIONAL ANALYSIS: SCS CSHB 252

Version U

Section 1.

Expresses the legislative intent behind section 2 of the legislation.

Section 2.

Changes the standard for construction of statutes in AS 47.10 from a standard promoting "the child's welfare" to a standard promoting "the best interests of the child, including the parents' participation in the child's upbringing".

Section 3-6.

These sections direct the Department of Health and Social Services to offer, through contract providers, intensive family preservation services to families under certain circumstances. These services will be funded with funding already appropriated for the specific purposes of "intensive family preservation services".

Section 7.

Amends AS 47.10.960 DUTY AND STANDARD OF CARE NOT CREATED to state that the department's failure to comply "does not, by itself, constitute a basis for civil liability for damages".

Section 8.

Defines "intensive family preservation services".

Section 9.

Provides that before an agency can seek to terminate parental rights, intensive family preservation services must be offered to the parents.

Section 10.

Directs DHSS to conduct a study in at least one region of the state to develop projections for the need and the cost of intensive family preservation services, develop a long-range plan, and complete a report on the study by November 30, 2004.

Section 11.

Makes sections 1 and 2 effective immediately.

Section 12.

Makes Sections 3-6 and 9, requiring intensive family preservation services, effective July 1, 2003

Section 13.

Makes section 8 and 10 effective July 1, 2002.

Sectional Analysis

HB

286

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 286(FSH)
(H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title Authorizing persons to hold more than one limited BRU Administration and Support
entry fishing permit Component Boards of Fisheries and Game
Sponsor Representative Scalzi
Requester House Fisheries Component No. 2048

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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FUND SOURCE (Thousands of Dollars)

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|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Gordy Williams Phone 465-6143
Division Commissioner's Office Date/Time 1/31/02 2:00 PM
Approved by: Gordy Williams for Commissioner Frank Rue Date 1/31/2002
Agency Fish and Game



ALASKA STATE LEGISLATURE

REPRESENTATIVE DREW SCALZI
State Capitol, Juneau
Alaska 99801-1182

OFFICIAL BUSINESS

(907) 465-2689; (800) 665-2689

Fax: (907) 465-3472

Email: Representative_Drew_Scalzi@legis.state.ak.us

April 24, 2002

To: Senator Robin Taylor
Chair, Senate Judiciary Committee

From: Rep. Drew Scalzi *DS*

Re: HB286 – Ownership of two permits; fleet consolidation

Senator Taylor, please schedule HB286 before your committee at your earliest convenience, pending referral from Senate Judiciary. There is a Senate Resources version forthcoming.

Thank you for your consideration.

(included)

DS:ph

REQUEST FOR
HEARING



Official Business

Alaska State Legislature

REPRESENTATIVE DREW SCALZI
State Capitol
Juneau, Alaska 99801-1182

(907) 465-2089; (800) 665-2089
FAX: (907) 465-3472

Representative_Drew_Scalzi@legis.state.ak.us

Sponsor Statement

HB286: "An Act allowing a person to hold two commercial fishing entry permits for a salmon fishery for the purpose of consolidating the fishing fleet for a salmon fishery; relation to salmon fishery associations and to salmon fishery assessments; and providing for an effective date."

The health of the salmon industry should be of the utmost importance to the state of Alaska as it directly impacts the economic health of the state. While nearly 175 million salmon were landed last summer, the fishermen's take was only \$216 million -- less than half of what they got 15 years ago. The upside is that global demand for salmon is exploding with the world consumption at almost 4 billion pounds last year, three times the amount of 20 years earlier. With a refocusing of fisheries management, the state should be able to regain its strong foothold in the worldwide market.

The goal of this bill is to voluntarily reduce the fleet size where desired and deemed necessary to promote greater economic incentives in a manner that would leave sufficient harvest capacity for large fish returns. With HB286, salmon limited entry and interim use permit holders will be allowed to hold no more than two permits; the provision applies exclusively to salmon fisheries.

Holder of two permits will not be granted any special fishing privileges over the holder of one permit; the Board of Fish would be prohibited from enacting regulations that would grant these privileges. This measure will facilitate removing a vessel and gear from a fishery; however, permits are not permanently removed from the system. If conditions improve, permits can be added back into fisheries, allowing each administrative area to address its particular difficulties by gear type.

HB286 provides the means for fishermen to tax (assess) themselves to assist fleet consolidation, thereby improving the fisheries for all participants. Fishermen are not asking the legislature to appropriate money for permit buybacks; they are seeking solutions from within the industry. This bill would provide the vehicle for collection of the self-assessment and the appropriation back to the association formed by the holders who wish to consolidate. Two-thirds of gear-type in an administrative area must approve the assessment; thus this measure ensures voluntary participation and approval from the majority of the permit holders. The assessment can be no greater than 5% of the ex-vessel value of the salmon landed by the permit holder; hence the value and assessment would vary from year to year. Some fisheries may feel they can only afford ¼%, while others may feel secure in voting for 5%; allowing the individual needs of each fishery to be met.

The bill clearly delineates the assessment process with all checks and balances adequately addressed to ensure the intent of the measure is correctly administered.

2/4/02

Sponsor Statement

Sectional Analysis

CS for HB 286(FSH)

"An Act allowing a person to hold two commercial fishing entry permits for a salmon fishery for the purpose of consolidating the fishing fleet for a salmon fishery; relating to salmon fishery association and to salmon fishery assessments; and providing for an effective date."

Section 1. Salmon Fishery Associations

- The commissioner of the Alaska Department of Fish and Game shall assist and encourage the formation of salmon fishery associations if a fishery desires to form such an association
- Allows for the voluntary formation of salmon fishery associations for the purpose of fleet consolidation
- The associations would be comprised of entry permit holders by fishery (gear type) within administrative areas
- The association must be incorporated as a nonprofit corporation under Alaska law (AS 10.20); represent the salmon interim-use and entry permit holders within the designated fishery; and, have a board of directors representative of these individuals
- The association must develop by-laws and articles of incorporation

Section 2.

- Adds a new section to existing law (AS 16.43.140©) to allow an individual to hold two entry permits, but a person who holds two entry permits for a salmon fishery is not afforded additional fishing privileges for the second permit
- Upon passage of this bill, a salmon interim-use or entry permit holder may purchase a second permit in the same fishery
- The creation of an association or a vote on an assessment is not required before an individual may purchase a second permit in the same fishery

Section 3.

- Provides the assessment receipts flow for the budget process

SECTIONAL ANALYSIS

Sectional Analysis

Section 4.

Salmon Fishery Assessment

- Provides the mechanism and legal process for salmon fishermen to levy an assessment on themselves
- To proceed with a proposed assessment in a fishery it is a voluntary action of the salmon fishermen within a particular fishery (gear type)
- They must first create a qualified salmon fishery association meeting the qualifications outlined in Section 1
- The value voted upon cannot exceed 5% of the ex-vessel (first wholesale) value
- Salmon fishermen choosing to proceed with an assessment vote will by fishery (gear type) determine through an election of all the interim-use and entry permit holders in the fishery if they want to assess themselves
- They also determine the rate of the assessment "not to exceed five percent" of the ex-vessel value
- Passage requires a 2/3 majority vote of all interim-use and entry permit holders in the fishery (gear type)

Amendment or Termination of a Salmon Fishery Assessment

- If salmon fishermen vote to approve an assessment, there is a process for them to amend the rate of the assessment or to terminate the assessment
- A petition for amending the rate or for terminating the assessment requires 25% of the interim-use or entry permit holders in the fishery that is the subject of the petition to propose either an amended assessment or termination of the assessment
- To pass it still requires a 2/3 majority of the eligible interim-use or entry permit holders and utilizes the public notice process and time line utilized for adopting an assessment

Collection of Assessment

- The collection of an approved assessment follows the same process as all other fishery taxes recorded, reported and collected by the Department of Revenue at the first point of sale

Funding for Qualified Salmon Fishery Associations

- All approved assessments collected by the Department of Revenue are appropriated to the Department of Fish and Game for funding the qualified salmon fishery association for the fishery in which the assessment was collected
- The assessment is appropriated to the salmon fishery association for the purposes outlined in its annual operating plan
- These purposes include consolidation of the fishing fleet in the salmon fishery, financial assistance to permit holders in the fishery to promote consolidation of the fishing fleet for the fishery, and for the administrative activities of the association
- An association receiving funding under this section is required to submit an annual report to both the Department of Fish and Game and its members (the entire gear type) describing their activities and how they are consistent with their articles of incorporation and bylaws

Definitions

- The definitions contained in this section are consistent with those for the Department of Revenue and the Department of Fish and Game already contained in law

Effective Date

- There is an immediate effective date under AS 01.10.070©

HOUSE BILL 286

What It does:

1. Allows a person to hold two salmon permits in the same fishery.
2. Allows fishermen to establish non-profit associations for the purpose of consolidating the salmon fleets.
3. Allows fishermen to tax themselves to help pay for needed consolidation.

Why it will help:

1. Lower salmon prices and run sizes will require a smaller salmon fleet in some areas of the state for fishermen to earn a fair wage for their efforts and investment.
2. Fishermen will be responsible for setting up the associations and convincing 2/3 of their fellow fishermen to tax their salmon catch to consolidate their fishery. Fishermen must find their own solution.
3. Consolidation would be voluntary within each of the state's 27 commercial salmon fisheries. Gillnetters in Cook Inlet will have no voice in what Bristol Bay gillnetters decide.
4. Consolidation programs will be guided by administrative procedures to ensure accountability to the fishermen and the public.

Testimony of David Beatford on House Bill 286

Executive Director of Southeast Alaska Seiners Association
Board of Directors of United Fishermen of Alaska.
Attorney

Mr. Chairman, members of the House Resources Committee, I appreciate this opportunity to speak to the Committee on HB 286, a bill that I believe is of great importance to the commercial fishermen of Alaska.

I would like to thank Representative Scalzi for introducing this legislation

HB 286 is offered at UFA's request

These are hard times in the salmon industry.

- >> In Bristol Bay, permits sell for one tenth what they commanded ten years ago. That permit value is a bench mark of the expectations fishermen have for that for that fishery and those expectations have dropped to ten cents on the dollar in ten year's time.
- >> In Southeast Alaska dozens of purse seine boats, each of which employ five fishermen, will be tied to the docks this summer because there is no market for their fish.
- >> Fishermen across the state see the value of their fish dropping to the point that many can no longer make a living fishing salmon. For example, sockeye salmon that brought fishermen well over a dollar a pound ten years ago fetched as little as 40 cts per pound last summer.

While this underscores the concerns of commercial fishermen, the difficulties the industry confronts should be of concern to all Alaskans.

- >> the commercial fishing industry is the largest private sector employer in our state and salmon fishing is the heart of the commercial fisheries.
- >> In most coastal communities, commercial fisheries provide 50% or more of basic private sector employment.
- >> As the salmon fisheries go, whether up or down, so goes coastal Alaska.

HB 286, the fleet consolidation bill that you have before you, is part of Alaskan fishermen's effort to help themselves in the face of some tough times.

The solution is conceptually simple. With reduced numbers of fish in some areas of the state, and reduced prices for salmon statewide, it will be helpful in some areas to reduce the size of the salmon fleet so that each fishermen can catch more fish and get a reasonable wage for their efforts and investment.

In developing this bill we held a number of principles in mind

- >> First, that fishermen should shoulder the primary responsibility for the program
- >> Second, that the consolidation program should be voluntary and regional, and
- >> finally that the programs put in place should be accountable to the fishermen who will pay for the program and to the people of the state

INFORMATION
STATEMENT

SUPPORT

Overview: The program is conceptually simple. It

- >> allows individual fishermen to hold two permits for the purpose of fleet consolidation. NO increased fishing privileges could go with a second permit.
- >> allows fishermen to set up a non profit association to help with the consolidation program.
- >> allows fishermen to vote on whether to tax themselves to pay for consolidation with a 2/3 majority required to levy a tax; and
- >> establishes administrative procedures to protect the interests of the fishermen and the people of the state.

Responsibility:

- >> If fishmen wanted to set up a consolidation program the fishermen would pay up front costs to get the program running -- setting up the association, notifying permit holders, polling the permit holders
- >> fishermen could choose to assess themselves up to 5% to implement the program hence fishermen would contribute funds to help consolidate their fishery. Fishermen could also seek out other sources of funding.
- >> fishermen would be responsible for administering the program through the association they created and controlled.

Voluntary: UFA purposefully set the bar high.

- >> 2/3 "yes" vote of all permit holders within a fishery is required to approve a tax on the ex-vessel value of salmon harvested in the fishery..
- >> But the program is voluntary not only at the outset but all along the way. The bill includes procedures to repeal the tax. If 25% of permit holders petition the association then a new election must be held to determine whether fishermen wish to change or repeal the tax.

Regional:

- >> Each gear group in each region controls the program for its fishery. Thus seiners in Southeast decide only for seiners in Southeast. Gillnetters in Prince William Sound have no voice in what gillnetters in Cook Inlet decide.

Accountable:

- >> If fishermen choose to set up an association to pursue fleet consolidation the association must develop an annual business plan
- >> The association will be required to report annually to fishermen and to state.
- >> At any time that fishermen become dissatisfied with the program they can vote the program out of existence.

These are hard times in the salmon industry. I appreciate the efforts of you who serve in the legislature to lend a hand. This bill will help commercial salmon fishermen to make strides toward solving our problems.

Thank you. I urge you to support this bill and thereby help us to help ourselves



UNITED FISHERMEN OF ALASKA

February 20, 2002

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
(907) 586-2820
(907) 463-2545 Fax
E-Mail: ufa@ufa-lish.org
www.ufa-lish.org

Representative Drew Scalzi
Representative Beverly Masek
Co-Chairs
House Resources Committee
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Re: HB 286 Ownership Of More Than One Fishery Permit

Dear Co-Chairs:

United Fishermen of Alaska supports passage of this bill to allow fishery permit stacking for the purpose of fleet reduction. Specifically, we support allowing:

- A natural person to own up to two permits in a salmon fishery
- Formation of regional non-profit associations to facilitate funding.
- A 2/3 majority vote by permit holders to authorize a self assessment of up to 5% of ex-vessel value

As you are aware, the Alaska salmon industry is facing challenges due to imports of farmed fish, the value of the Japanese yen, the lagging Japanese economy, and inefficiencies in the present harvesting structure. It is important that fishermen have a self-directed means of removing excess capacity without the use of state funds and in a manner that is constitutionally viable.

We discussed expanding this permit-stacking program to fisheries other than salmon, but do not feel there has been adequate discussion with other non-salmon fisheries of this option at the present time.

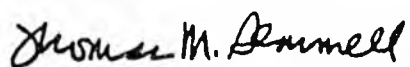
MEMBER ORGANIZATIONS

Alaska Longline Fisherman's Association • Alaska Trollers Association • Alsea Processors Association • Bristol Bay Reserve
Chignik Regional Aquaculture Association • Concerned Area "M" Fisherman • Cook Inlet Aquaculture Association
Copper River Salmon Producers Association • Cordova District Fishermen United • Douglas Island Pink and Chum
Kanal Peninsula Fisherman's Association • Kodiak Regional Aquaculture Association • Kodiak Sainers Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Old Harbor Fisherman's Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Puro Sano Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Regional Dive Fisheries Association • Southeast Alaska Sainers Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • United Salmon Association • United Southeast Alaska Gillnetters

The twenty-nine member groups of UFA would appreciate your support in passing this bill.

If you have any questions about our position or if you need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Thomas M. Gemmell".

Thomas M. Gemmell
Executive Director

Petersburg Vessel Owners Association

P.O. Box 232

Petersburg, Alaska 99833

March 14, 2002 Phone (907) 772-9323 Fax (907) 772-4495

Representative Drew Scalzi
Alaska State Legislature
Capitol (MS 3100)
Juneau, AK 99801-1182

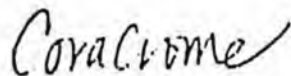
RE: Support HB 286 Own More Than One Limited Entry Permit

Petersburg Vessel Owners Association is a group of commercial fishermen who participate in a variety of fisheries statewide. Income from commercial fishing is very important to our community and to the Alaskan economy. In recent years, salmon fishermen have faced falling prices and weak markets for their products. This is due to a variety of factors including competition from cheap farmed salmon, a weak yen, and reduced market opportunities.

Fleet reduction is one way for our industry to reinvent itself to survive and prosper in the future. By creating mechanisms to reduce the number of active permits, we will enable fisheries to provide compensation for those who can no longer profit in the fishery and ensure that those who remain are able to survive. HB 286 is an innovative solution that would allow fleets around the state to design a program to reduce the number of permits in their fishery. Each fishery and region could customize the program to fit the special set of circumstances they are facing. Any assessment under this legislation would be voluntary, requiring a two-thirds majority vote.

This legislation is a valuable tool to help the industry face our challenges and move into the future. We appreciate your consideration of these comments and hope you will support this bill. If we can assist you in any way, please feel free to contact us.

Respectfully,



Cora Crome
Director

Cordova District Fishermen United

Celebrating 65 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / phone (907) 424-3447 / fax (907) 424-3430 /
e-mail cdfu@ptialaska.net

February 9, 2002

House Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

SENT VIA FACSIMILE TO 907.465.3472

RE: CS for HB 286 - Permit Stacking for Fleet Reduction Purposes

Dear Members,

Cordova District Fishermen United, representing the fishing fleets of Area E-- Prince William Sound and the Copper River--supports the CS for HB 286. The salmon industry in Alaska is reeling from the impacts of low-cost farmed fish and a weakened Japanese economy, and must utilize a variety of mechanisms aimed at decreasing costs and increasing efficiencies. Harvesters in our industry need the ability to remove excess capacity, where desirable, so that their investments in efficiencies and decreased costs are not mooted by reactivation of present latent licenses once industry viability increases.

Additionally, we are in full support of the assessment mechanism that provides fleets, regionally and voluntarily, to assess themselves to accomplish their fleet reduction goals. The 2/3rd majority of the permit holders of any gear group that is required prior to any assessment provides an important safeguard.

This is thoughtful, responsible legislation that provides an extremely significant tool for salmon fishermen to utilize as they attempt to find viability in today's volatile salmon industry. We urge your full support of CS for HB 286.

Sincerely,

Sue Aspelund

Sue Aspelund
Executive Director



P.O. Box 762 • Kodiak • AK • 99615
Phone: (907) 486-6899 • Fax: (907) 486-7058 • Email: kodiak@unitedsalmon.org

February 21, 2002

Representative Drew Scalzi
State Capitol
Juneau, AK 99801-1182

Dear Drew;

The United Salmon Association would like to express its support for HB 286.

As fishermen work to strengthen the salmon industry in Alaska, tools such as those provided in HB 286 will allow them to address their own regional needs and move forward in their efforts to revitalize fisheries in their own areas.

Thank you for all of your efforts on behalf of Alaskan fishermen.

Sincerely,

A handwritten signature in cursive script that reads "Thom Wischer".

Thom Wischer
Chairman
USA/Kodiak

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway
Juneau, AK 99801



Phone 907-586-6652

Fax 907-586-5648

E-mail: seafa@gci.net

February 22, 2002

Rep. Drew Scalzi, Co-Chair
Rep. Beverly Masek, Co-Chair
House Resources
Alaska State Legislature
State Capitol, Room 124
Juneau, AK 99801

RE: Support for HB 286

The Southeast Alaska Fishermen's Alliance is a multi-gear group representing the interests of salmon, crab, shrimp and longline fishermen of Southeast Alaska. We support HB 286 but would like HB 286 to be amended for all state fisheries and not confined to salmon only for the following reasons:

- The original bill was for statewide fisheries, I sent the information to my members as a bill for statewide fisheries and did not receive any opposition from them on the aspect of the bill being statewide and since the bill has been changed to salmon only my members have been contacting me to see if we could change it back to statewide fisheries.
- The bill is written so that the individual, regional fishery has to choose the options provided under this bill. It cannot be forced on the majority of the fleet, they have to agree, and therefore what is the harm in allowing all the fisheries the same options as the salmon industry.
- We believe that the statewide option in this bill is necessary, as other fleets besides salmon have struggled over the past several years with trying to deal with excess effort in their fishery. This legislation would provide these fleets with an option that could possibly work for them.
- As the salmon fleet might take advantage of the options this bill provides them, there is the possibility as permits are sold, and stacked that the fishermen selling out of the salmon fishery but still owns their boat may look at alternative fisheries to get into. These fisheries need the same tools as the salmon industry at the same time to prevent possible harm to their fishery by permits being fished.
 - As an example, lets look at the SE AK pot shrimp fishery. Since the shrimp fishery went limited entry, this fleet has tried to find ways to reduce the number of permits that were issued. While HB 288 which deals with CFEC buy back statutes is a very worthy bill, it will not work in the shrimp fishery because the problem there is ½ the permits issued are non-transferable. HB 288 does not allow the purchase of non-transferable permits. Under HB 286, it might be possible to put together an association to assess the fishermen, and contract with the willing non-transferable permit owners to not renew their permits for two years so the

permit disappears. To purchase transferable permits in this fleet would almost guarantee some time in the future when the non-transferable permits have phased away that it would have become too exclusive and new permits would need to be issued.

It has been suggested that we allow this bill to go through the legislature with just Salmon included at this time and try to amend the statute next year, instead we suggest that since the bill has the safe guards built in and that a program can not be forced onto a fleet that the bill be for all fisheries at this time.

Southeast Alaska Fishermen's Alliance supports this legislation whether it is for salmon only or amended to provide a tool for all fisheries in the State. We thank you for considering our arguments to amend the legislation for all fisheries and hope that the resource committee can support and pass this bill on to the next committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Hansen", followed by a horizontal line extending to the right.

Kathy Hansen
Executive Director

Gig & Julie Decker
Box 2138, Wrangell, AK 99929
907-874-3110
gigjulle@aptalaska.net

Representative Beverly Masek
Representative Drew Scalzi
Co-Chairs, House Resources Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

February 21, 2002

Re: HB 286 Ownership of More Than One Fishery Permit

Dear Representatives Masek and Scalzi:

Julie and I support passage of this bill to allow fishery permit stacking for the purpose of fleet reduction. Specifically, we support allowing:

- 1) A natural person to own up to two permits in a salmon fishery
- 2) Formation of regional non-profit associations to facilitate funding
- 3) 2/3 majority vote by permit holders to authorize a self assessment of up to 5% of ex-vessel value

I have been a commercial salmon fisherman in Alaska for 30 years, and I have also participated in over 60 different fisheries in Alaska. I am on the Board of Directors for the United Fishermen of Alaska. My wife has fished with me for several years before becoming the executive director of the Southeast Alaska Regional Dive Fisheries Association.

The overwhelming thing that we recognize is that the fishing industry needs to change. This bill would create a mechanism to begin to change the industry.

Thank you for your consideration.

Sincerely,

Gig & Julie Decker

United Southeast Alaska Gillnetters (USAG)
PO Box 22427
Juneau, AK 99802
March 1, 2002

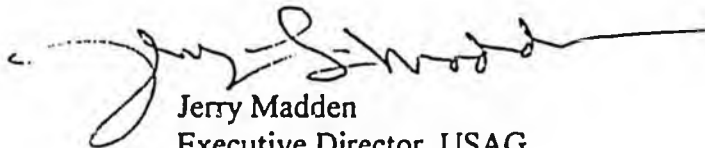
Dear Representative Drew Schalzi:

We support House Bill 286. We are working closely with UFA lobbyist Jerry McCune on this Bill and feel that Jerry speaks for us as well as for other member groups.

We feel that HB 286 is a tool individuals in any particular fishery can use to reduce the size of their fleet to a more economically viable unit. This legislation lays out the mechanism for carrying out fleet reduction. A lot more needs to be done to save the salmon industry from its current crisis, but this is a good start.

Thank you for your support and continued leadership on fishery issues.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jerry Madden", with a long horizontal flourish extending to the right.

Jerry Madden
Executive Director, USAG
(907) 586-5860

HB

296

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 296(CRA)
 (H) Publish Date: 3/1/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act Relating to Mergers & Consolidations BRU Community Assist & Econ Dev. (405)
 of Municipalities _____ Component Community & Business Development
 Sponsor Representative Whitaker
 Requester House Community & Regional Affairs Component No. 2486

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

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|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this department.

Prepared by: Pat Poland, Director Phone 907-269-4578
 Division Community & Business Development Date/Time 2/28/02 9:53 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 2/28/2002
 Agency Department of Community & Economic Development

Alaska State Legislature

Representative Jim Whitaker
House of Representatives
District 31



Session
Capitol Building, Room 411
Juneau, Alaska 99801
Phone: (907) 465-3004
Fax: (907) 465-2070

Interim
119 N. Cushman St. Suite 213
Fairbanks, AK 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Sponsor Statement

HB 296 – Municipal Consolidation

Within Alaska statutes, Title 29 allows municipalities to merge by consolidation or unification. Through the years, many communities have attempted to merge through this process, some successfully, some not so successfully. It is through those efforts that deficiencies in fair voting practices surrounding municipal mergers has come to light.

HB 296 seeks to establish a more fair and timely process in the petition and election of municipal mergers by limiting the time allowed for gathering signatures as well as setting clear requirements for how the outcome of the election is to be determined.

HB 296
Municipal Mergers & Consolidations

Section 1 – Amends AS 29.06.100 (a) to limit the time period in which a petitioner may gather signatures for a petition to consolidate. The new time period will be 365 days prior to filing the petition with the LBC.

This removes the potential for signatures to be gathered over the course of several years, with the possibility that many of the signatures may be of persons who no longer reside within the jurisdiction.

Section 2 – Amends AS 29.06.100 to allow for partial approval of a consolidation question.

This essentially allows a community to "opt out" of a consolidation by voting down the question within its boundaries, without defeating the whole measure if there are other cities supporting consolidation with the borough.

Section 3 – Amends AS 29.06.140(a) to require a majority of the votes in each of the municipalities proposed to be merged or consolidated in order for the question to pass.

This assures that a merger or consolidation will be decided by the majority of the voting residents of each of the communities in the proposal.

Section 4 – Adds to uncodified law an applicability section that prevents the changes in this bill from applying to a current consolidation petition.

April 11, 2002

Senator Robbin Taylor
Judiciary Chair

Gregory N. Goodman
P.O. Box 1254
Haines, AK. 99827
907-766-3231
oinker@yahoo.com


Ref: Proposed changes to HB 296

Senator,

Just a brief note to let you know my feeling concerning the proposed changes to House Bill 296. As you know there will be an election in Haines shortly, it's an attempt to consolidate the City and Borough governments. House Bill 296, should it pass with the proposed amendments, would not only delay the vote for consolidation but may very well kill any chance that it may have of passing. The proposed changes to HB 296 would require separate votes of the residents of the City and Borough in order to accomplish consolidation. Currently 12.5% of the Borough residents live outside the City limits. The remaining 87.5% live within the City limits. I believe that it would be a disservice to allow the minority to dictate to the majority. This vote should be borough wide.

Please do not allow this bill to pass with the proposed changes. It could destroy what I believe to be the wishes of the majority for a consolidated government in Haines.

Respectfully,



Gregory N. Goodman

INFORMATION
STATEMENT

HB

297

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act related to aggravating factors at BRU Criminal Division
sentencing." Component All
 Sponsor Representative Meyer
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY 2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

HB 297 adds supplying alcohol or a controlled substance to a victim of a sexual offense as an aggravating factor to be considered at sentencing.

Passage of this legislation is not expected to have a fiscal impact on the Department of Law. The bill adds an additional factor for the judge to consider at sentencing, but will not add new hearings, extend the length of current proceedings, nor make them more difficult.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 1/25/02 2:19 PM
 Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 1/25/2002
 Agency: Department of Law

FISCAL NOTE

**STATE OF ALASKA
2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act related to aggravating BRU Legal and Advocacy Services
factors in sentencing." Component Public Defender Agency
 Sponsor Rep. Meyer
 Requester House Judiciary Component No. 1831

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | . | . | . | . | . | . |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|--|---------|---------|---------|---------|---------|---------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type—Do not abbreviate) | | | | | | |
| TOTAL | . | . | . | . | . | . |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation would add an aggravator in felony sentencing if the defendant is convicted of a sexual offense and supplied alcohol or a controlled substance to the victim in connection with the offense. The Public Defender Agency believes this bill will have a fiscal impact on the workload of the Agency, but not on the caseload of the Agency, but cannot quantify it, and therefore an indeterminate fiscal note is submitted.

Prepared by: Barbara Brink, Director Phone (907) 334-4416
 Division Public Defender Agency Date/Time 1/29/02 3:42 PM
 Approved by: Jim Duncan, Commissioner Date 1/29/2002
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 297(JUD)
 (H) Publish Date: 2/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "An Act relating to aggravating factors
sentencing." BRU: Administration and Operations
 Component: All
 Sponsor: Representative Meyer
 Requester: House Judiciary Committee Component No.: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type-Do not abbreviate) | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would create a new aggravator in sentencing for offenders who supplied alcohol or controlled substances to the victim in sexual assault offenses. Offenders can already be charged with other crimes in these circumstances, e.g., Misconduct Involving a Controlled Substance or Furnishing Liquor to a Minor, so the Department of Corrections is not anticipating a large impact as a result of this legislation, therefore, we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 465-4852
 Division: Commissioner's Office Date/Time 1/29/02 2:19 PM
 Approved by: Margaret Pugh, Commissioner Date 1/29/02
 Agency: Department of Corrections



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

MEMORANDUM

DATE: February 28, 2002

TO: Senator Robin Taylor
Chair, Senate Rules Committee

FROM: Representative Kevin Meyer *KM*

RE: Scheduling of CS HB 297(JUD) Aggravator for Sexual Assault

At your earliest convenience, please schedule CS HB 297(JUD), Aggravator for Sexual Assault, for a hearing in your committee.

CS HB 297(JUD) adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to a victim in furtherance of a sexual assault with the intent to make the victim incapacitated, the defendant may be held to a higher degree of punishment.

Attachments.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

SPONSOR STATEMENT

CS HB 297(JUD)

“An Act related to aggravating factors at sentencing.”

When drugs or alcohol are used to lower the inhibitions of a person to a point where they become the victim of a sexual assault, the seriousness of the crime should be elevated in the eye of the court.

CS HB 297(JUD) adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to the victim in furtherance of the offense, the defendant may be held to a higher degree of punishment. An aggravating factor is an element or circumstance involved in the commission of a crime that elevates its seriousness; a fact justifying more than the usual measure of damages or punishment.

AS 12.55.125 lists presumptive terms of sentencing. CS HB 297(JUD) will allow a judge to increase a presumptive sentence up to the maximum term of imprisonment for that offense.

For example, the presumptive sentence for a first time offender convicted of a sexual assault in the first degree is eight years. With this new aggravator, the judge could increase the sentence to the maximum allowed.

It is important to remember that an aggravator is applied at sentencing. The defendant will have already been convicted of sexual assault.

2/25/02

al or simulated

- (3) the offense occurs within the observation of a person under 16 years of age.
- (b) Indecent exposure in the first degree is a class C felony. (§ 3 ch 81 SLA 1998)

or breast;

Effective dates. — Section 24, ch. 81, SLA 1998 makes this section effective June 11, 1998, in accordance with AS 01.10.070(c).

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the provisions of this section "apply to offenses committed on or after June 11, 1998."

child under 18

Sec. 11.41.460. Indecent exposure in the second degree. (a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

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(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983; am § 4 ch 81 SLA 1998)

on knowing that

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Effect of amendments. — The 1998 amendment, effective June 11, 1998, inserted "in the second degree" throughout, and in subsection (a) substituted "if the offender knowingly exposes the offender's genitals in the presence of another person" for "if the offender intentionally exposes the offender's genitals to an-

other person," and deleted "on that person" from the end.

Editor's notes. — Section 23, ch. 81, SLA 1998 provides that the 1998 amendments to this section "apply to offenses committed on or after June 11, 1998."

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1 § 8 ch 79 SLA

Sec. 11.41.470. Definitions. For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

lma' -related style

- (1) "health care worker" includes a person who is or purports to be an anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;
- (2) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act;
- (3) "legal guardian" means a person who is under a duty to exercise general supervision over a minor or other person committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 as a result of a court order, statute, or regulation, and includes Department of Health and Social Services employees, foster parents, and staff members and other employees of group homes or youth facilities where the minor or other person is placed as a result of a court order or the action of the Department of Health and Social Services, and police officers, probation officers, and social workers when those persons are exercising custodial control over a minor or other person.
- (4) "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;
- (5) "position of authority" means an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor;
- (6) "sexual act" means sexual penetration or sexual contact;
- (7) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;
- (8) "without consent" means that a person (A) with or without resisting, is coerced by the use of force against a person or property, by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

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App. 1984). 1

2 P.2d 481 (Alaska)

P.2d 1379 (Alaska)

764 P.2d 318 (Alaska)

State, 951 P.2d

offender com

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JAN 25 2002



January 22, 2002

Representative Kevin Meyer
Alaska State Capitol Rm. # 110
Juneau, AK 99801-1182

Dear Representative Meyer:

I am writing on behalf of the Board of Directors of Standing Together Against Rape, Inc. (STAR) in Anchorage, Alaska. As you are aware, STAR is a non-profit agency whose mission is to support and advocate for victims of sexual violence and their loved ones.

We are writing today to express our support for House Bill 297 to add *supplying alcohol or a controlled substance to a victim as an aggravating factor for sentencing*. On January 16, at a regular meeting of the Board of Directors, the Board voted to support this bill.

Thank you for your continued efforts on behalf of victims of sexual assault and abuse.

Sincerely,

Karen Bitzer
Executive Director

1057 W. FIREWEED LANE, SUITE 230 • ANCHORAGE, ALASKA 99503 • BUSINESS 907-276-7279

24-HOUR CRISIS 907-276-7273 • TOLL FREE 1-800-478-8999 • FAX 907-278-9983 • TTDY 907-278-9988 • STAR@AK.NET

Providing advocacy and support for victims and their loved ones, and education for our community

STATE OF ALASKA

JAN 25 2002

DEPARTMENT OF PUBLIC SAFETY

COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

TONY KNOWLES, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4358
FAX: (907) 465-9627
OFFICE ADDRESS: 450 WHITTIER ST.

January 23, 2002

The Honorable Kevin Meyer
Alaska State House of Representative
State Capitol, Room
Juneau, AK 99801-1182

Dear Representative Meyer:

As the state council charged with providing leadership in meeting the needs of victims of domestic violence and sexual assault, the Council on Domestic Violence and Sexual Assault strongly supports House Bill 297, "an Act relating to aggravating factors at sentencing." This bill would allow for stiffer sentences for sexual predators in Alaska, and could be a strong deterrent for perpetrators who intentionally use drugs or alcohol to lower the inhibitions of their victims.

Many sexual assaults in Alaska involve alcohol or other drugs. Victims debilitated by intoxication often present little or no resistance during the assault; nor do they clearly recall the event later. These factors allow the perpetrators to commit serious crimes, seemingly without accountability or punishment. House Bill 297 can help keep Alaskans safe not only by serving as a deterrent, but also by giving courts the option to impose longer sentences for those who commit the crime of sexual assault by intentionally sedating their victims. The Council supports your efforts to increase the penalty for committing this horrible crime in Alaska and appreciates your concern for the protection and safety of Alaskans.

Sincerely,



Barbara Thompson
Chair



ALASKA NETWORK ON
DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, Rm 209
Juneau, Alaska 99801

(907) 586-3650 ph
(907) 463-4493 fx

To: Representative Meyer
From: Lauree Hugonin *LH*
Date: 1/23/02
Re: HB297

Thank you for introducing HB297, an Act related to aggravating factors at sentencing. The Network supports adding this aggravating factor for judges to consider in sentencing convicted sex offenders.

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

People who choose to commit sex offenses often look for people who are vulnerable and can offer the least resistance. They often try and increase that vulnerability through the deliberate use of alcohol or controlled substances.

In 1997, the legislature passed legislation to add flunitrazepam (rohypnol) and gamma-hydroxybutrate (GHB) to the schedule 4-A drug list. Both are commonly known as "date rape" drugs and "forget pills". Sex offenders use these drugs to keep victims from being able to resist and as a defense against being caught. Because survivors will have been heavily sedated, they probably will not have complete recall of the sexual assault. They may be uncertain about exactly what happened and who was involved. The inability of a victim to recall facts makes prosecution of a sexual assault where these drugs were used very difficult.

We have heard anecdotally of an increase in GHB use in sexual assaults on the Kenai Peninsula. Well publicized, your bill can send a strong message to those offenders that the penalties they face will be increased and maybe some of them will make the choice not to offend.

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

Chuck Kopp, Vice President
Kenai

Michael Corhill, Past President
Mesa, AZ

Kim Wannamaker, Member
Kenai
Pres. Kenai Chapter

Terry Games, Member
Anchorage
Pres. Anchorage Chapter

Wjella Long, Member
Wasilla
Pres. Mat-Su Chapter

Lonnie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Andrea Jacobson, Member
Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

January 31, 2002

Representative Kevin Meyer
State Capitol
Juneau, AK 99801-1182

Dear Representative Meyer:

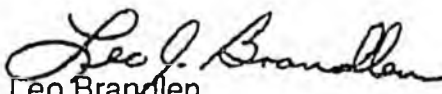
Thank you for introducing House Bill 297 (22-LS1186VA) related to aggravated factors of sentencing as it pertains to providing alcohol or a controlled substance to a victim.

The APOA State Board of Directors recently met and after discussing proposed legislation, decided to unanimously support this bill.

We believe that this legislation will assist prosecutors in the sentencing of offenders in cases where the offender has given the victim alcohol or drugs to take advantage of the victim such as in cases involving "date rape" drugs and the like.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,


Leo Brandlen
State President

To: Ethan Berkowitz
From: Karen Bitzer, Executive Director
Date: February 6, 2002

Thank you for your conversations regarding HB 297. I appreciate your introspection and willingness to talk with us regarding the bill.

I have talked with law enforcement, which actually inspired this bill, and offer the following scenarios for you. They are based in reality.

A man who gives her alcohol as a "relaxant" assaults a 12-year-old girl. He could be charged with giving alcohol to a minor, sexual abuse of a minor, and probably a few other things. But he pleads to SAM and is sentenced to 10 years, will be serving 6. In the course of the case, he reveals that he will plead, do his 6 and come out to do more kids. He likes to do kids and he will serve his time now and will plead again if he is caught the next time. Even though the original charge did not include the providing alcohol to a minor, the case could be made a sentencing to add the aggravator.

Or we have a victim in the hospital right now who was severely beaten and raped and sodomized. Every bone in her face is broken, her leg is broken and her pelvic and abdominal region injuries are so severe, she will require extensive surgery and will never be "normal" again – physically or emotionally. Date rape drugs are suspected. As a victim advocate I would hope that every aggravator and charge would be used to ensure this mad not have access to another person – especially a young woman – again...ever.

From a victim advocate perspective, one of the hardest things for a victim to realize is that the prosecuting attorney is there to present the case – not necessarily what she believes to be the whole case or her case. When sentencing aggravators are possible, and the victim has the ability to reference those in victim impact statements, it allows the victim to feel that they have advocated for themselves. This is especially true with drugs or alcohol that is sometimes plead away in the charges and yet can be reinforced in the sentencing phase, especially if the prosecutor and the victim can make the case together.

A victim is really not able to stand before the judge in a victim impact statement and say *please consider building the case law allowed for under AS.....section.....that would allow for a sentencing aggravator because drugs or alcohol were used.* A victim can say, please consider applying the sentencing aggravator because he kept buying me beers and telling me that "one more won't hurt" or "if I didn't drink the beer with him, he would leave me with no way to get home." STAR is a victim advocacy agency. We think victims should have every tool possible. The sentencing phase is the only time a victim is really allowed to speak on his or her own behalf. If they are on the stand, a victim can only answer the questions of the DA or defense and it never goes the way they hope. They always wish they had been able to say something else. And if the suspect pleads, the victim is only left with the impact statement at sentencing to even be heard by the court.

Thanks Ethan for your thoughtful reflection. Please do not hesitate to call with comments or questions.

I will look forward to seeing you in Juneau.

HB

317

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 317(FIN)
(H) Publish Date: 4/17/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DPS
Title An Act relating to stalking . . . BRU Statewide Support
Sponsor Representative Crawford Component APSIN
Requester House Finance Component No. 528

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type-Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the department.

Prepared by: Diane Schenker, Administrative Manager, CJIS Phone (907) 269-5092
Division Administrative Services Date/Time 4/15/02 2:26 PM
Approved by: Commissioner Glenn Godfroy Date 4/15/2002
Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 317(JUD)
 (H) Publish Date: 4/9/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to stalking..." BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Rep. Crawford
 Requester (H) JUD Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | . | . | . | . | . | . |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | . | . | . | . | . | . |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | . | . | . | . | . | . |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | . | . | . | . | . | . |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*
 See attached.

Prepared by: Barbara Brink, Director Phone (907) 334-4416
 Division Public Defender Agency Date/Time 3/6/02 11:18 AM
 Approved by: Jim Duncan, Commissioner Date 3/6/2002
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 317(JUD)
 (H) Publish Date: 4/9/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title An Act relating to stalking and amendi BRU Administration and Operations
 Rule 4, Alaska Rules of Civil Procedure..... Component All
 Sponsor Representative Crawford
 Requester House Judiciary Component No. 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation creates a new provision to include protective orders related to non-domestic violence stalking. In addition, it includes a violation of this protective order to AS 11.56.740(a). That creates a new provision to the crime of "violating a protective order".

It is expected that there will be relatively few stalking protective orders. In order to obtain a stalking protective order, the victim essentially has to prove that the stalking occurred, and then the stalker can be arrested which will probably be the preferred response. We do not currently have the availability of the protective orders so we do not know how many will be issued, and then subsequently violated, therefore, we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower
 Division: Commissioner's Office
 Approved by: Margaret Pugh, Commissioner
 Agency: Department of Corrections.

Phone 465-4652
 Date/Time 3/5/02 2:33 PM
 Date 3/5/02

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 317(JUD)
(H) Publish Date: 4/9/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act relating to stalking and amending Rules
4, Alaska Rules of Civil Procedure, and Rule 9 . . ." BRU: Criminal Division
Sponsor: Representative Crawford Component: 1st-4th Judicial Districts; Criminal
Requester: House Judiciary Committee Component No.: 2198-99:2201/03/61/79
Appeals/Special Litigation

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*
HB 317 would allow a person who believes they are a stalking victim to petition the court to grant a protective order to keep the alleged stalker away from them.

While passage of this bill will create new prosecutions, the Department of Law does not anticipate a significant fiscal impact.

Prepared by: Joan M. Kasson Phone: (907) 465-5370
Division: Attorney General's Office Date/Time: 3/1/02 1:18 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date: 3/1/2002
Agency: Department of Law

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-3438 (phone)
1-888-478-3438 (toll free)
1-907-465-4565 (fax)



Interim Address
716 West Fourth Avenue
Anchorage, Alaska 99501-2133
(phone) 1-907-269-0100
(fax) 1-907-269-0105

Representative Harry Crawford
District 22

Memorandum

To: Senator Robin Taylor, Senate Judiciary Chairman

From: Representative Harry Crawford

Date: April 22, 2002

RE: HB 317, Stalking Protective Orders

I respectfully request that this bill be scheduled for a hearing in your committee. All the pertinent backup materials requested are attached.

A handwritten signature in cursive script, appearing to read "Harry", written in dark ink.

E-mail: Representative_Harry_Crawford@legis.state.ak.us

**REQUEST FOR
HEARING**

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-3438 (phone)
1-888-478-3438 (toll free)
1-907-465-4565 (fax)



Interim Address
716 West Fourth Avenue
Anchorage, Alaska 99501-2133
(phone) 1-907-269-0100
(fax) 1-907-269-0105

Representative Harry Crawford
District 22

**REPRESENTATIVE HARRY CRAWFORD
SPONSOR STATEMENT FOR HB 317**

HB 317 closes a dangerous loophole in the Alaska statutes, by allowing unacquainted victims of stalking to enjoy the security of a judicial protective order. Current law provides protection to those in domestic situations and minor children, but enjoins the victims of strangers from equal protection of the law. HB 317 allows the victims of stalking to seek and obtain a protective order in cases of stalking that are not crimes involving domestic violence. The bill streamlines the process for public safety and judicial practitioners by harmonizing the arrest and notification procedures to mirror those already in place for domestic violence situations. The bill adds the crime of violation of a child protective order and of a violation of a stalking protective order, these changes also reflect existing practitioner procedures.

I urge your support for this necessary change in the law.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 20, 2002

SUBJECT: Sectional Summary (CSHB 317(), "F" Version, Draft,
Dated 2/14/02, Work Order No. 22-LS1258\F)

TO: Representative Harry Crawford
Attn: Dave

FROM: Gerald P. Luckhaupt *JPL*
Legal Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends AS 04.11.494(e)(1)(B) to provide a conforming change to the change made in sec. 2 of the CS().

Section 2. Amends the existing crime of violating a protective order, AS 11.56.740(a), by adding violations of stalking protective orders, sec. 5 of the CS(), and child protective injunctions under AS 47.17.069 as alternative ways to commit this crime.

Section 3. Amends AS 12.25.030(b) to provide a conforming change to the change made in sec. 2 of the CS().

Section 4. Amends AS 18.65.530(a) to provide a conforming change to the change made in sec. 2 of the CS().

Section 5. Amends AS 18.65 by adding new sections that provide for the issuance of protective orders in cases of stalking, that are not crimes involving domestic violence.

Section 6. Amends AS 18.66.990(3) to provide a conforming change to the change made in sec. 2 of the CS().

Section 7. Provides notice that sec. 5 includes an indirect amendment to a court rule.

GPL:lmb
02-029.lmb

Sectional Analysis

HB

330

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 330(FIN)am
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title "An Act relating to providing alcoholic beverages to persons under 21..." BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor House Judiciary by Request
 Requester Senate JUD Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|---------|---------|---------|---------|---------|---------|
| Personal Services | . | . | . | . | . | . |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | . | . | . | . | . | . |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

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|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | . | . | . | . | . | . |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | . | . | . | . | . | . |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
 See attached.

Prepared by: Barbara Brink, Director Phone (907) 334-4416
 Division Public Defender Agency Date/Time 4/4/02 3:33 PM
 Approved by: Jim Duncan, Commissioner Date 4/4/2002
 Agency Department of Administration

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSHB 330(FIN) am

ANALYSIS CONTINUATION

This legislation would increase the penalty from an A misdemeanor to a C felony for furnishing alcohol to a person under 21 years of age if the person under 21, who receives the alcohol, negligently causes serious physical injury to or the death of another person and the serious physical injury or death occurs while the person under 21 was operating motorized equipment, a firearm, or a watercraft while under the influence of the alcohol received.

This bill is likely to have some fiscal impact on the Agency, by increasing the workload of attorneys. Increasing the charge from a misdemeanor to a felony increases the workload. It is not possible, however, to determine what percentage of cases that the Agency currently handles represent people charged with furnishing alcohol to persons under 21, that result in the person under 21, who received the alcohol, seriously injuring or causing the death of another person as specifically outlined. There is no way to gather that information therefore an indeterminate fiscal note is submitted. Despite the narrowing language in the amendments, the Agency still has concerns regarding determinations of causation when time and intervening or superseding factors exist.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 330(JUD)
(H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to providing alcoholic BRU Criminal Division
beverages to a person under 21 years of age." Component 1st-4th Judicial Districts; Criminal
Sponsor House Judiciary Committee by Request Appeals/Special Litigation
Requester House Judiciary Committee Component No. 2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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| CAPITAL EXPENDITURES | | | | | | |
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| CHANGE IN REVENUES () | | | | | | |
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FUND SOURCE (Thousands of Dollars)

| FUND SOURCE | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*
HB 330 creates a new class C felony. The new crime would be providing an alcoholic beverage to someone under 21, if the recipient of the alcoholic beverage then injures or causes the death of another person while under the influence of that alcoholic beverage.

The Department of Law anticipates little fiscal impact to the Criminal Division from passage of this bill.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 2/8/02 3:25 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/8/2002
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 330(JUD)
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title: "An Act relating to providing alcoholic beverages to a person under 21 years of age." BRU: Administration and Operations
 Sponsor: House Judiciary Committee Component: All
 Requester: House Judiciary Committee Component No.: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | *** | *** | *** | *** | *** | *** |

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| CAPITAL EXPENDITURES | | | | | | |
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|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|---|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type--Do not abbreviate) | | | | | | |
| TOTAL | *** | *** | *** | *** | *** | *** |

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)
 This bill would make it a C felony for someone to provide alcohol to a person under the age of 21 and the person who receives the alcohol injures or causes the death of another person while under the influence of the provided alcohol.

 This bill could have a significant impact on the Department of Corrections as it is currently written. Injury is a very broad term and could be interpreted to mean someone who has been punched in the nose. We have no way of knowing how broadly it would be interpreted or how difficult it would be to prosecute, nor do we know how often an injury is involved in these cases. We do know it occurs. Anytime misdemeanants are elevated to felons, not only are sentences likely to increase, but probation also becomes a requirement and an additional fiscal impact.

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 2/8/02 4:09 PM
 Approved by: Margaret Pugh, Commissioner Date 2/8/02
 Agency: Department of Corrections

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
Fax: (907) 465-2040

Heather M. Nobrega
Counsel to Committee

MEMORANDUM

To: Senator Robin Taylor, Chairman
Senate Judiciary Committee

From: Representative Norman Rokeberg, Chairman
House Judiciary Committee

Date: April 9, 2002

Re: Request to hear HB 330

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

The House Judiciary Committee respectfully requests that HB 330, Providing Alcohol to Persons Under 21, be scheduled for a hearing.

Attached are:

1. Copy of the bill
2. Sponsor Statement
3. Three fiscal notes
4. AS 04.16.051
5. Furnishing statistics from DPS
6. Various news articles
7. Letters of support

**REQUEST FOR
HEARING**

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
Fax: (907) 465-2040

Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 330 (FIN) am

The House Judiciary Committee was requested to introduce this bill by Mothers Against Drunk Driving. HB 330 creates tougher penalties for adults who furnish alcohol to minors, who then go on to negligently cause serious injury or death.

On July 9, 2001, Anchorage Police Officer Justin Wollam, and three others were killed when driver Robert Esper crossed the median of the Glenn Highway, and collided head-on with Officer Wollam's patrol car during the early hours of the morning. Esper was suspected of driving while intoxicated.

It was later discovered that Robert Esper, age 19, had a blood alcohol level of .091. The legal limit, at the time of the accident, was .10 BAC, but has since been lowered to .08 BAC. In investigating the events leading up to the tragic and deadly accident, police discovered that Esper, and his underage friends, had been drinking at a party where alcohol was provided by two adults, Ronald Frank and Michael Hunter.

Frank and Hunter were arrested and charged with multiple counts of contributing to the delinquency of a minor, and furnishing alcohol to a minor. Both are class A misdemeanors subject to imprisonment of not more than one year, and a fine of no more than \$5000. Frank pled to two counts of furnishing, and Hunter pled to one count of furnishing. On February 20, Frank was sentenced to two years in jail (the maximum), and Hunter received 240 days in jail.

HB 330 would increase the penalty, for an adult who furnishes a minor alcohol, to a class C felony, if the minor negligently causes death or serious physical injury while operating motorized equipment, firearms, or watercraft under the influence of the alcohol that was furnished by the adult. A class C felony carries a sentence of not more than five years, and a fine of no more than \$50,000.

It is important that those individuals like Ronald Frank and Michael Hunter, who purchase alcohol for minors, be appropriately punished when those minors go on to hurt or kill someone while under the influence of alcohol. HB 330 creates those appropriate penalties and is intended to further dissuade adults from supplying alcohol to minors.

The committee urges your support of this bill.

HB 330 (FIN): 4/9/02

Sponsor Statement

premises. A
c beverages by
3 ch 131 SLA

Effect of amendments. — The 1995 amendment, effective September 13, 1995, added subsection (b).
Editor's notes. — Section 6, ch. 81, SLA 1995

provides that subsection (b), added by § 1, ch. 81, SLA 1995, "applies to an offense committed on or after September 13, 1995."

NOTES TO DECISIONS

ibility of licensee

Double jeopardy. — Administrative revocation of a minor's license to drive under AS 28.15.183 is not "punishment" for double jeopardy purposes; thus, a minor whose license was revoked under that section could still be prosecuted for the offense of minor consuming. *Rexford v. State*, 941 P.2d 906 (Alaska Ct. App. 1997), overruled on other grounds, *State v. Esmailka*, 961 P.2d 432 (Alaska Ct. App. 1998).

appointed counsel if they are indigent. *State v. District Court*, 927 P.2d 1295 (Alaska Ct. App. 1996).

ed premises.
in in premises

Even if revocation of a minor's driver's license under AS 28.15.183 is unconstitutional, the minor is not immunized from prosecution for illegal use of alcoholic beverages under this section; the aggrieved minor's remedy is to attack the license revocation. *State v. Esmailka*, 961 P.2d 432 (Alaska Ct. App. 1998).

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

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Stated in *Shamberg v. State*, 762 P.2d 488 (Alaska Ct. App. 1988); *Martin-Wilacn v. State*, Ct. App. Op. No. 4226 (File No. A-7354), P.2d (Alaska Ct. App. 2000).

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Right to jury trial. — Minors charged with this offense are entitled to a jury trial and to court-

Cited in *M.O.W. v. State*, 645 P.2d 1229 (Alaska Ct. App. 1982); *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988); *State v. Simpson*, 946 P.2d 890 (Alaska Ct. App. 1997).

mployee of the
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Sec. 04.16.051. Furnishing or delivery of alcoholic beverages to persons under the age of 21. (a) A person may not furnish or deliver an alcoholic beverage to a person under the age of 21 years.

(b) This section does not prohibit the furnishing or delivery of an alcoholic beverage

(1) by a parent to the parent's child, by a guardian to the guardian's ward, or by a person to the legal spouse of that person if the furnishing or delivery occurs off licensed premises; or

(2) by a licensed physician or nurse to a patient in the course of administering medical treatment.

(c) Acts unlawful under AS 11.51.130 are not made legal by (b) of this section.

(d) A person acting with criminal negligence who violates this section is guilty of a class C felony if, within the five years preceding the violation, the person has been previously convicted under

(1) this section; or

(2) a law or ordinance of this or another jurisdiction with elements substantially similar to this section. (§ 3 ch 131 SLA 1980, am § 9 ch 109 SLA 1983; am §§ 7, 8 ch 156 SLA 1988; am § 1 ch 50 SLA 1989; am § 1 ch 46 SLA 1994)

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Effect of amendments. — The 1994 amendment, effective July 1, 1994, added subsection (d).

Legislative history reports. — For Senate letter

of intent relating to the amendments to (a) and (b) of this section by secs. 7 and 8, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

0 years of age
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s. (§ 3 ch 131

NOTES TO DECISIONS

Contributory negligence. — Fact that injured party violated this section by providing liquor to minor causing accident does not mitigate liability of seller of liquor in violation of AS 04.16.052. *Morris v. Farley Enters., Inc.*, 661 P.2d 167 (Alaska 1983).

defendant engaged in only a single criminal act which violated two separate statutes and the two counts should have merged. *Newsome v. State*, 782 P.2d 689 (Alaska Ct. App. 1989).

Comparative negligence. — A licensee who violates this section is not entitled to assert the comparative fault of the minor/consumer, in an action for damages resulting from the unlawful sale of intoxicating liquor. *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991).

Exceptions as affirmative defenses. — At a minimum, the exceptions specified under subsection (b) are "defenses" to criminal liability; that is, if a defendant wishes to invoke one of these exceptions, then at the very least the defendant must affirmatively raise the exception and point to some evidence from which a reasonable jury could decide that issue in his or her favor. Accordingly, where defendant presented no evidence that he had received his alcoholic beverages from a parent, guardian, or spouse, his conviction was affirmed. *Trout v. State*, 866 P.2d 1323 (Alaska Ct. App. 1994).

nder the age
e, possess, or
.051(b).

Double jeopardy violation. — Trial court violated defendant's double jeopardy rights by sentencing him for both contributing to the delinquency of a minor and for furnishing alcohol to a minor for the single act of furnishing alcohol to the minor, where

conviction in
31 SLA 1980;